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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

06 CR 150 (JSR)

5 MICHAEL MATERASSO,

6 Defendant.

7 -----x  
8 New York, N.Y.  
9 February 19, 2015  
4:10 p.m.

10  
11 Before:

12 JED S. RAKOFF

13  
14 District Judge

15 APPEARANCES

16 PREET BHARARA

17 United States Attorney for the  
Southern District of New York

18 BY: ANDREW D. BEATY

DANIEL B. TEHRANI

Assistant United States Attorneys

19 SEWARD KISSEL

20 Attorneys for Defendant

21 BY: RITA GLAVIN

22 ALSO PRESENT

George Olivares, Probation Officer

23 Brian Maloney

24 Bailey Smith

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1 THE DEPUTY CLERK: This is February 19, 2015, United  
2 States v. Michael Materasso, docket number 06 CR 150.

3 Will everyone please be seated, and will the parties  
4 please identify themselves for the record.

5 MR. BEATY: Good afternoon, your Honor.

6 Andrew Beaty and Daniel Tehrani for the government.

7 We are joined at counsel table by Probation Officer  
8 George Olivares.

9 THE COURT: Good afternoon.

10 MS. GLAVIN: Good afternoon, your Honor.

11 Rita Glavin.

12 I am here with my client, Michael Materasso.

13 With me at counsel table are two assistants from my  
14 law firm, Brian Maloney and Bailey Smith.

15 THE COURT: Good afternoon.

16 We are here for sentence on specification 4. Just so  
17 that the record is clear, specifications 2 and 3 were  
18 previously dismissed. Specification 1, following an  
19 evidentiary hearing, was found by the Court not to have been  
20 proven and I issued my findings of fact and conclusions of law  
21 in that respect.

22 With respect also, I received a joint telephone call  
23 from counsel for the parties yesterday informing me that the  
24 defendant has been indicted by the Manhattan District  
25 Attorney's office on domestic violence charges. I want to make

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1 it clear that that will play no role whatsoever in this  
2 sentence:

3 Number 1. It is just an accusation.

4 Number 2. I haven't seen it, I don't believe the  
5 parties have seen the indictment, so we don't even know  
6 precisely what it relates to.

7 Number 3. To the extent it relates to the same  
8 activity as specification number 1, I have made my  
9 determination on specification 1, so it will be irrelevant.

10 The parties raised it with the Court simply because of  
11 some discovery issues relating to state court which they are in  
12 the process of partly resolving consensually and partly  
13 briefing before this Court.

14 Against that background, let me hear, first, from  
15 defense counsel and then from government counsel and then from  
16 the defendant if he wishes to be heard.

17 MS. GLAVIN: Your Honor, the defense is asking for  
18 time served and that Mr. Materasso's supervised release be  
19 terminated.

20 He's been in with respect to specification 4 for three  
21 months, if we count the time he served in the state -- for  
22 three months and one week -- he has been in since November 12.

23 This particular incident, all four specifications came  
24 to light because of a domestic dispute at the home. He and his  
25 wife were not getting along and he, Mr. Materasso, is going to

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1 have to deal with that when he gets out. What he is focusing  
2 on now is dealing with the drug issue. He relapsed during the  
3 midst of this family crisis and he also admitted to your Honor  
4 on the stand having used a couple of times since he got out in  
5 July.

6 THE COURT: I am not going to take account of what he  
7 admitted on the stand, but the problem you have -- and I might  
8 as well flag it for you, although you have probably intuited  
9 it -- is his long history of violations. I actually am not  
10 sure I ever had a defendant who has so repeatedly violated the  
11 terms of supervised release as this defendant.

12 Back in 2010, he admitted to three violations and I at  
13 that time simply sentenced him to a new term of supervised  
14 release.

15 Then in 2011, he was found guilty of four  
16 violations -- 1, 2 and 3 through an evidentiary hearing and the  
17 fourth one he admitted. Those were very serious violations and  
18 so I sentenced him to 24 months' imprisonment. Those included  
19 felony possession of a firearm, possession of drug  
20 paraphernalia, possession of drugs of hydrocodone and codeine,  
21 etc.

22 Then in 2013, he was found guilty of two more  
23 specifications -- failure to report for drug testing and use of  
24 methamphetamine -- and I sentenced him to time served plus  
25 three years' supervised release.

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1 Now we have in 2014 still another violation.

2 So we have, since this defendant went on supervised  
3 release, violations in 2010, violations in 2011, violations in  
4 2013, and a violation in 2014.

5 Why doesn't that history cry out for a serious  
6 sentence here, a serious sentence of imprisonment?

7 I totally agree with you that we should, after  
8 whatever prison term is imposed, terminate supervised release  
9 because I have given up totally on Mr. Materasso to a degree  
10 that I think I have never given up on any other defendant  
11 before.

12 He is a man of intelligence. He is more than  
13 intelligent -- he is clever, resourceful. He comes from lovely  
14 parents. He has everything one could wish in the capabilities  
15 of turning his life around and he refuses to do so in a hundred  
16 different ways. His attitude is centered on one thing only,  
17 and that is his mistaken view of what will gain him short-term  
18 benefits. So I have no sympathy for Mr. Materasso. No  
19 rational judge would have any sympathy for Mr. Materasso at  
20 this stage.

21 Please continue.

22 MS. GLAVIN: Your Honor, his justification, he  
23 relapsed and he used drugs. He was originally sentenced by  
24 your Honor to 30 months' imprisonment. Since he has been on  
25 supervised release, there is no doubt that he has repeatedly

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1 violated. This one, on the scale of violations, yeah, he used;  
2 he is a drug addict and it is a problem he is likely going to  
3 have when he gets out. Do I have hopes that he is not going to  
4 use again?

5 THE COURT: No. I don't think that he is a drug  
6 addict in the sense of someone that has a compulsion. He can  
7 turn it on and turn it off. You yourself brought out through  
8 his testimony the long periods when he was not using drugs. So  
9 there's an element of voluntariness here. He gets in a  
10 stressful situation. He is mad at his wife, although she had,  
11 as he himself frankly admitted, had more than good reason to be  
12 mad at him and decides, oh, well, to hell with the orders of  
13 the Court, to hell with the people at probation who have been  
14 trying over these many years to help me, to hell with  
15 everything but my short-term desire, so I will revert to meth  
16 today and lie about it.

17 This is not an addict in the sense of someone who is  
18 struggling to overcome a compulsive addiction. This is a man  
19 whose short-term views outweigh any long-term views. And I  
20 worry, with the two parents that I have seen in this court, for  
21 his poor children when neither parent seems to be capable of  
22 exercising foresight.

23 Go ahead.

24 MS. GLAVIN: Your Honor, I don't think Mr. Materasso  
25 is going to disagree with anything that you have to say when he

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1 has a chance to address the Court, but he was in for 30 months  
2 in his original sentence. He has been on supervised release  
3 now for, I think, six years perhaps. And of that supervised  
4 release, I think he served almost the same amount of time in  
5 prison as his original sentence, if not more.

6 Mr. Materasso, this time around, he used. He is very,  
7 very smart. This has been sort of one of the things that has  
8 been astonishing to me in his representation is how incredibly  
9 smart he is.

10 He is very well supported. His employer thinks very  
11 highly of him, as Mr. Olivares knows. And he knows he has to  
12 serve time. But this incident is about him going and using  
13 drugs and, yes, your Honor, if it is to heck with what the  
14 Court has to say and to heck with what Judge Rakoff has to  
15 say -- and, believe me, he knows the consequences for that --  
16 but if it is to say heck with that, how much time are you going  
17 to put him in jail that is going to make a difference at this  
18 point for even deterrence effect?

19 What Michael just went through with his evidentiary  
20 hearing with his wife and what he is about to go through with  
21 the Manhattan District Attorney's office is amongst the most  
22 gut-wrenching things he has had to go through because, in this  
23 period of incarceration, he has not been able to see his  
24 children. His wife, although she keeps repeatedly contacting  
25 him while he is in jail, he cannot contact her back because

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1 then he would be violating his order of protection that she  
2 automatically got in November when she made the complaint.

3 So he is sort of a man who has not just had to pay the  
4 price with your Honor, but the collateral consequences of this  
5 last term because of his wife -- and I will say it here, I have  
6 said it here and I will say it to the Manhattan District  
7 Attorney's office -- his wife is completely fabricating  
8 domestic violence. They used to have arguments. He didn't lay  
9 a hand on her. He didn't choke her. And if he did, God help  
10 him because Irma Materasso is a very vindictive woman who will  
11 stop at nothing. He has to go back and deal with that. He has  
12 already had to deal with three months in jail because of her.

13 His drug use, yeah, he got lucky. He did use when he  
14 got out. Didn't use again. And then when his wife moved out  
15 and everybody went to the shelter, yeah, woe is me and he used.

16 THE COURT: When you talk about -- and this, I think,  
17 is really largely irrelevant but just because you have raised  
18 it -- his wife's limitations and deficiencies, what happened,  
19 though, by his own admission, was he cheated on her, he lied to  
20 her about it and then she took the children and went to a  
21 shelter. I don't see how that could be transmuted into her  
22 doing something evil to him.

23 MS. GLAVIN: Well, your Honor, we were not allowed to  
24 put on evidence because she didn't testify, but Irma Materasso  
25 has been running a prostitution ring the entire time he has



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1       been in --

2               THE COURT:   That may or may not be true.  I don't know  
3       that one way or another, but my point is, just going on what we  
4       do know -- and I'm not here to argue about Mrs. Materasso, I am  
5       concerned with Mr. Materasso, but you were making the argument  
6       that he has been subjected to all of these terrible things by  
7       her.  All I know, and the one and only thing that was before  
8       me, other than the abuse, and I found for you on the abuse and  
9       found the government had not proven that, but what was  
10      unquestionable was that he lied to her about his sexual  
11      escapades -- may be overstating it -- and she has, as one might  
12      well expect -- got mad and took the children away to a shelter.  
13      That much is, I think, uncontested, yes?

14             MS. GLAVIN:  Uncontested but, your Honor, I would  
15      suggest to you that the situation is much more complicated --

16             THE COURT:  I think that is almost certainly the case.  
17      I think it is -- as I think I may have indicated at the time of  
18      the hearing -- not a marriage made in heaven, but it really is  
19      largely irrelevant to our discussion here today.

20             MS. GLAVIN:  I raise it in the sense that he is most  
21      definitely in a volatile marriage.  I think the two of them  
22      have lied to each other about a lot of things.  And as your  
23      Honor described, what happened that particular week or that  
24      three-day period which came out undisputed at the hearing, he  
25      did what he did and he admitted it.  And she did what she did,

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1 but that wasn't part of the hearing.

2 I am just suggesting that the collateral consequences  
3 to him over the last three months, where since he has been out  
4 in July, he has been living with a wife who, unbeknownst to  
5 him, was repeatedly texting his probation officer saying that  
6 he was using drugs when he wasn't even using drugs, went so far  
7 as to send a phony email to the probation officer claiming to  
8 be a co-worker of him to get him fired from his job, saying  
9 that he is using, he is coming in high and there is going to be  
10 an innocent labor worker that is killed because of him --  
11 things that just were not true. She then went so far as to  
12 write your Honor about this. During the supervised release  
13 period, this is all happening unbeknownst to him and he is  
14 wondering why he gets called into probation.

15 And there is this side relationship going with his  
16 wife and the probation officer, and it has not just been Mr.  
17 Olivares, it's been the prior probation officers. There has  
18 been this really strange triangular relationship since he has  
19 been on supervision where his wife, whenever she is unhappy,  
20 there is some type of letter to probation or saying to  
21 probation he did something -- whether he did it or not and then  
22 he somehow ends up here, but she is in the center of a lot of  
23 this.

24 He is not a perfect guy and there was definitely a woe  
25 is me, I'm sorry for myself, I don't care what everyone thinks,

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1 and he went and used drugs and the ramifications are suffered  
2 by his family.

3 But what has happened now is that his wife has the  
4 three kids -- or two kids. She has had no contact with the  
5 family since your Honor's decision came out, she just stopped  
6 texting. We think we know where she is, but she has moved out  
7 of the apartment that they shared on the Upper East, Midtown  
8 East. We think she is in New Jersey. I think her mother has  
9 gone back to Holland.

10 He has to put his life back together. He still has a  
11 job, we think -- which was a very good job and he was good at  
12 it; if he gets out, he would like to do that because he can  
13 support his kids and he was supporting his kids and his wife.  
14 He was making, with the union job, \$5,000 a week or every two  
15 weeks which was a really good paying job and there were very  
16 long hours and he was doing the job, and he was getting there  
17 first thing in the morning.

18 In terms of whether you give him a chance or don't  
19 give him a chance, I think it just gets to the point, Judge,  
20 where it is just diminishing returns. For the amount of time  
21 he spent in jail, and if you weigh it against all of the other  
22 people that you see sentenced in this courthouse every day, he  
23 is not on some running crime spree while he has been out on  
24 supervised release, but he is serving time and time and time.  
25 And I am not going to do a lot on the insider trading thing,

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1 but I look at all of these guys that do insider trading for  
2 years and don't do a day.

3 Michael has been in repeatedly on supervised release  
4 just for using drugs, and I am willing to bet that some of  
5 those guys that get out on insider trading and are cooperating  
6 may perhaps have used drugs during the course of their  
7 supervised release but --

8 THE COURT: Ms. Glavin, I really think you are  
9 reaching --

10 MS. GLAVIN: Putting that aside --

11 THE COURT: -- and if I didn't have such overwhelming  
12 respect for your legal abilities, I would say you are desperate  
13 in the argument that you are now making.

14 MS. GLAVIN: I really feel that he has not been this  
15 one-man crime spree since he got out in July. If he had been,  
16 I could see your Honor slamming him, but he used and he cheated  
17 on his wife and the consequences for that has been devastating.

18 When he came in here the first time before your Honor  
19 on the 18th, he took responsibility immediately for what he  
20 did. He already admitted it to the probation officer, but he  
21 pled guilty and he wasn't going to waste anybody's time.

22 On specifications 1 through 3, he wasn't going to lie,  
23 and he wasn't going to say that he did something that he didn't  
24 do.

25 THE COURT: Again, I think we getting far -- first of

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1 all, in connection with previous specifications, I have found  
2 that he had lied. Secondly, in his testimony here in the  
3 hearing we just had, there were certainly portions of the  
4 testimony that were inconsistent. I didn't have to reach any  
5 of that in my decision, but if I had to reach it, I think he  
6 was not perhaps the model candidate you are suggesting now.

7 MS. GLAVIN: No. I think this goes back to my central  
8 point, he is not a one-man crime spree since he has been out in  
9 July.

10 To the extent he may have colored things in a way to  
11 his benefit during his testimony -- as I think a lot of  
12 defendants do when they take the stand -- he was coloring it,  
13 if he was, on the small stuff.

14 If he gets out, he is going to back into -- he had  
15 already been doing narcotics on his own. He does have a family  
16 to go back to. I think a lot of stuff has come out as a result  
17 of this last time. It is clear, I think, that there are very  
18 serious underlying family issues and that he is going to have  
19 to deal with immediately and go to family court.

20 And, your Honor, I just say let him go deal with that.  
21 He may lose his two kids because of this whole situation. We  
22 are going to have to go through this again in state court. He  
23 is not able to see his kids -- I am not sure how long this  
24 temporary order is.

25 (Discussion off the record between defendant and

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1 counsel)

2 MS. GLAVIN: The temporary restraining order that she  
3 got with the complaint, he can't see his wife and kids until  
4 May. And if he does anything, he knows she is unhappy with  
5 him, she is going to report it and then we are just going to go  
6 on with the cycle.

7 My view on this is, let him go today. He has enough  
8 to deal with. There has been so much collateral consequences  
9 and so much pain. This was an intensely personal specification  
10 proceeding that I think was horrible for everybody involved,  
11 and I just want to say put it to bed.

12 He spent more time in jail than he was originally  
13 sentenced to. He spent more time in jail on supervised release  
14 than he sent on supervised release. The message has been sent.  
15 Your Honor has sent a very powerful message as your Honor has  
16 done since 2010 when the violations started happening. There  
17 is no specific deterrence effect at this point, it is just  
18 going to end this continuing bad cycle, I think. But I think  
19 it is going to be more important for Michael.

20 His sister Jodi is here today and his mom Donna and  
21 his father Michael Sr.

22 THE COURT: Yes. One of the very few positive things  
23 that have come out of this otherwise unpleasant series of  
24 proceedings is, I have had a chance to observe in the case of  
25 the mother, hear her testify -- his parents are lovely. I

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1 think his sister probably is as well. While I have no sympathy  
2 for Mr. Materasso, I have tremendous sympathy for them, the  
3 pain they must have been going through day after day, year  
4 after year and always remaining supportive. It was very  
5 interesting to see the exchange of emails between Mrs.  
6 Materasso's mother and Mr. Materasso's mother. And in the  
7 Court's view, while they were both supportive of their  
8 children, as mother's should be, there was a certainty to Mr.  
9 Materasso's mother that was perhaps lacking from  
10 Mrs. Materasso's mother.

11 Let's hear from the government.

12 MS. GLAVIN: There was one other point that I wanted  
13 to make.

14 Since he has been in, he has had a stellar record over  
15 at the MCC. Actually, when I go to see him, the guards know  
16 him. He is liked over there. He has been absolutely no  
17 problem.

18 THE COURT: Is this an argument why I should sentence  
19 him to the MCC?

20 MS. GLAVIN: No. It is not as though he is reverted  
21 into, woe is me, over there. He has been productive while he  
22 has been over there. His attitude, I think, has been positive  
23 in the face of what seem like insurmountable obstacles that  
24 were going to happen. I just wanted to point that out to the  
25 Court.

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1 THE COURT: Thank you.

2 Let me hear from the government.

3 MR. BEATY: Just very briefly because I think that you  
4 have a better sense than I do of the history of this case and  
5 the history of this defendant, the government thinks that a  
6 sentence at the high end of the guideline range of three to  
7 nine months is appropriate. Probation has requested a sentence  
8 of nine months and the government agrees.

9 THE COURT: The problem I always have is the  
10 theoretical problem, where are they getting the nine months?  
11 Where is the sentencing commission getting the nine months?  
12 They are pulling it out of thin air. In fact, if I wanted to  
13 impose a greater than nine-month sentence on Mr. Materasso, I  
14 could point to the absurdity that the guidelines gives him the  
15 criminal history category of I, no matter how many violations  
16 of supervised release are committed. You would think that the  
17 guidelines, if they were remotely rational -- a hypothesis that  
18 I find repeatedly contradicted -- would say that the guideline  
19 range ought to go up, if it is the second offense, a third  
20 offense, a fourth offense.

21 So he is going to get more than time served, I  
22 believe. I still want to hear from him before I make any final  
23 decisions, but I don't look to the guidelines as much of a  
24 guide in determining what is the right sentence.

25 MR. BEATY: Understood, your Honor. I will say, the



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1 last time that he was in for a violation of supervised release,  
2 the Court gave him six months. It is clear that was not  
3 enough; within a week of coming out, he was using drugs  
4 again --

5 THE COURT: Here is the point that your adversary is  
6 making. She essentially said, imprisonment has not worked as a  
7 deterrence in this case, whatever his motivations, whatever  
8 complexities lead him to this behavior, there doesn't seem to  
9 have been much deterrent value in the Court's previous terms of  
10 imprisonment.

11 Now, of course, I could give him a five-year sentence  
12 and that would have not a deterrent effect, but certainly an  
13 incapacitation effect, but specification 4 is not that major a  
14 violation, it is really the context of all of the prior  
15 violations that make it more serious, if you will.

16 So it seems to me, subject to hearing from you further  
17 and from Mr. Materasso that this is the rare case where the  
18 sentence the Court should fashion should be largely a function  
19 of asserting the importance of the Court's orders, of  
20 compliance with the probation department's directives; it  
21 really has less to do with Mr. Materasso. It is not divorced,  
22 of course, from the specifics of his case, but in the context  
23 of his history, it is more of a question of what is fair and  
24 just when a man keeps violating and violating his supervised  
25 release, what message, in the sense of -- I don't even like the

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1 word "general deterrence" because it is partly that, but it is  
2 more a question of just simply saying, you can't continue to do  
3 this.

4 The Court and the probation department of this court  
5 will not allow that to happen. And I do view the probation  
6 office as, in very many different respects, the victim in this  
7 case because they have struggled with this gentleman. And if  
8 their efforts are not vindicated through a meaningful sentence,  
9 I believe they will be let down and their effectiveness  
10 undercut. So it is those broader determinations, it seems to  
11 me, to be not the only thing I have to consider, all of the  
12 factors.

13 MR. BEATY: We agree, your Honor. To accept the  
14 defense's argument would reward the defendant for violating  
15 over and over and over. I think a substantial sentence is  
16 warranted to promote respect for the Court's order and for the  
17 law, for the probation department and, as you say, both as  
18 deterrence for Mr. Materasso and for others on supervised  
19 release.

20 THE COURT: Thank you.

21 I am going to hear from Mr. Materasso.

22 THE DEFENDANT: Thank you, your Honor, for giving me a  
23 chance to speak.

24 Your Honor, first, I would like to thank you for  
25 affording my right to a hearing. And I apologize to you, to

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1 Court for the time it took up. My objective was not to waste  
2 the valuable time of the Court.

3 THE COURT: You were entitled to a hearing and you  
4 were vindicated in that hearing with respect to this  
5 specification.

6 THE DEFENDANT: Your Honor, I would like to apologize  
7 to my family and thank them for all of the support that they  
8 have given me and I have let them down time and time again.

9 I would like to thank my attorneys for the hard work  
10 they have done for me. They have gone beyond for me.

11 Your Honor, I have to respectfully disagree with you  
12 saying I am not a drug addict. I have dealt with the disease  
13 of addiction for over 11 years and I use drugs every single day  
14 in large amounts. I am lucky to still be here.

15 What your Honor doesn't know is that I started my  
16 probation -- I was not afforded the drug program, as your Honor  
17 had ordered -- not to slander Mr. Olivares. It was not his  
18 fault. I took it upon myself to put myself in an NA program.  
19 I had to sponsor a home group. I did it every single day in  
20 order to stay off drugs -- every single day I used drugs. It  
21 wasn't that I just decided to go use.

22 On the outside world, the disease of addiction -- it  
23 is categorized as a disease -- I am well aware that this  
24 disease is chronic, and there is no way around it.

25 If I had one wish in the world, it would not be for

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1 all of the money in the world; it would be to not be an addict.  
2 This has brought me to my knees.

3 Many times I have assured my father. My father has  
4 stage 4 cancer and I am in jail.

5 I wish you could see me on the outside, your Honor. I  
6 work 12 to 15 hours a day, seven days a week. I paid for a  
7 \$5,000-a-month apartment, \$2,000 a month for my daughter's  
8 preschool. My daughter has been pulled from preschool now that  
9 I'm not there.

10 I am not a bad man, your Honor. I was not selling  
11 drugs. I lived in the UN building. I was approved by the  
12 board. People respect me. I struggle with addiction, hands  
13 down. I don't agree with saying that I just use it once in a  
14 while. I respectfully disagree.

15 I had a pretty good relationship with Mr. Olivares. I  
16 had no idea what my wife was going through -- I maybe said on  
17 the stand that I used because of my wife. I have been using  
18 drugs whether I was sad, whether I was happy. I used drugs my  
19 entire life. I don't blame my wife for using drugs. I have  
20 two little babies, your Honor, and I truly just want to get  
21 home to provide for them.

22 My wife has never worked in her life. What she would  
23 have to do in order to support my kids, I can only imagine. I  
24 am a good father, your Honor, my children miss me.

25 And I know that you have given up on me. Tell you the

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1 truth, I feel like I have given up on myself. I want to get  
2 help. I want this drug addiction to be over. I work all day  
3 long. I went to an NA meeting every single day. I relapsed.  
4 They told me to put yourself in a 30-day program.

5 Your Honor, I had six probation officers. All six  
6 probation officers reminded me that your Honor is my judge,  
7 that there is no three-strike rule in the probation department  
8 and any violation will be punished and a 90 percent chance you  
9 can go to jail.

10 And I apologize for lying to Mr. Olivares. And I  
11 didn't see if I could ask for a program that I knew I could  
12 have gone back to jail. I apologize for lying. I apologize  
13 for you giving up hope on me.

14 Thank you very much for listening.

15 THE COURT: It is interesting to hear Mr. Materasso  
16 speak. Part of me says that he can be very manipulative and he  
17 knows the right sounds to make, so to speak. But part of me  
18 actually has to give some weight to what he just said because I  
19 think that while he may not be addicted now and during the time  
20 of this offense in the way that he was years earlier that he  
21 has just described, that doesn't mean that he was free of  
22 addiction.

23 The neuroscience of this, which is still developing  
24 but is interesting, essentially, casts doubt on many of the  
25 drug programs that our own probation office uses because, what

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1 is going on, according to these studies in addiction, is that  
2 when you have the release of dopamine that occurs in the early  
3 stages of the uses of these various drugs and gives rise to all  
4 sorts of positive effects in terms of mood. It creates  
5 long-term memories that don't disappear in five or ten years,  
6 let alone in six months, and that can be triggered by the  
7 appropriate cues. And once triggered, make it very difficult  
8 to resist use of whatever is the drug of choice.

9 So there is a certain backing for what Mr. Materasso  
10 just said in the admittedly not well developed but interesting  
11 neuroscience.

12 For reasons I have already indicated, I am not going  
13 to give the time served sentence. I have already said why and  
14 I won't repeat all of that other than to say that there is a  
15 fundamental vindication of not just the authority of this  
16 Court, but the authority of the probation office that is very  
17 important to this Court that prohibits a sentence of only three  
18 months which would be, at most, that will be given credit for  
19 state time and so forth.

20 On the other hand, I am rethinking a little bit. I  
21 came in here, and my initial feeling was to give the nine-month  
22 sentence. The only thing that stuck in my craw would be, that  
23 would be the sentence recommended by the guidelines and that  
24 certainly goes against my modus operandi. But I think there is  
25 something to what Mr. Materasso says. So the sentence of the

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1 Court is that the defendant is sentenced to six months on  
2 specification 4. We have already previously revoked his  
3 previous term of supervised release. No further term of  
4 supervised release will be imposed.

5 Mr. Materasso commits new crimes, in some ways, he is  
6 going to face worst punishment because he will not be under the  
7 supervised release regime that he will be sentenced to, will be  
8 under the substantive crime where the penalties are typically  
9 much higher. So, while I frankly admit that Mr. Materasso's  
10 statement did touch a bit of renewed sympathy for him in the  
11 Court's mind, I am still not very optimistic about his future.  
12 Maybe I am wrong -- I pray that I am wrong. In any event,  
13 there will be no further term of supervised release and the  
14 sentence will be six months.

15 Before I advise the defendant of his right of appeal,  
16 is there anything else that any counsel -- anything from the  
17 government?

18 MR. BEATY: No, your Honor.

19 THE COURT: Anything from the defense?

20 MS. GLAVIN: Your Honor, just with respect to the time  
21 that he has been in, we would just ask your Honor credit that  
22 in terms of the sentence being imposed. He was in for months  
23 in state custody.

24 THE COURT: No. I am going to do it in the normal  
25 federal way. Federal custody will be the only way counted.

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1           Mr. Materasso, you have the right to appeal the  
2 sentence. Do you understand that?

3           THE DEFENDANT: Yes, your Honor.

4           THE COURT: If you cannot afford counsel for the  
5 appeal. Ms. Glavin, of course, has undertaken to make you her  
6 lifetime work, so she will be glad to represent you on appeal.

7           Anything else?

8           You understand that the Court will appoint counsel for  
9 you free of charge?

10          THE DEFENDANT: Yes, your Honor.

11          THE COURT: Very good.

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